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Attorneys for Plaintiff

Antonio Lopez, Johanna Lopez, & S.L. by and through his guardian ad litem
Rocio Flores**UNITED STATE DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANTONIO LOPEZ, individually;
 JOHANNA LOPEZ, individually;
 M.R., by and through his guardian ad
 litem, April Rodriguez, individually
 and as successor in interest to
 Brandon Lopez; B.L. and J.L., by and
 through their guardian ad litem
 Rachel Perez, individually and as
 successors in interest to Brandon
 Lopez; S.L., by and through his
 guardian ad litem, Rocio Flores,
 individually and as successor in
 interest to Brandon Lopez,,

Plaintiff,

vs.

Case No.: 8:22-cv-01351-JVS-ADS

*(Honorable James V. Selna; Magistrate
 Judge Autumn D. Spaeth)*

**PLAINTIFFS' EX PARTE MOTION
TO MODIFY THE SCHEDULING
ORDER**

*(Filed concurrently with Declaration of
 Lena P. Andrews and Proposed Order)*

CITY OF ANAHEIM, a municipal corporation; CITY OF SANTA ANA, a municipal corporation; DAVID VALENTIN, individually and in his official capacity as the Chief of Police for the CITY OF SANTA ANA Police Department; JORGE CISNEROS, individually and in his official capacity as the Chief of Police for the CITY OF ANAHEIM Police Department; PAUL DELGADO, individually and in his official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN; KENNETH WEBER, individually and in his official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN; CAITLIN PANOV, individually and in her official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN, individually and in his official capacity as an officer for the CITY OF ANAHEIM Police Department; BRETT HEITMAN; DOES 1-10, individually and in their official capacity as law enforcement officers for the CITY OF ANAHEIM Police Department and CITY OF SANTA ANA Police Department,,

Defendants.

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Plaintiffs Johanna Lopez, Antonio Lopez, and S.L. hereby move this Court ex parte for an Order modifying the scheduling order and continuing all dates and deadlines in this matter. This Motion is made on the grounds that good casue exists to modify the scheduling order as the parties need additional time to mediate Plaintiffs Johanna Lopez and Antonio Lopez's claims and there is insufficient time under the current scheduling order to finish conducting necessary discovery before the current cut off.

1 Since April 18, 2024, the parties were actively engaged in crafting a
 2 stipulation to extend all deadlines. However on May 2, 2024, the Defendants
 3 changed their position without warning, approximately one week before the current
 4 discovery cutoff, necessitating the filing of this Motion. The parties met and
 5 conferred extensively regarding the stipulation, including agreeing upon a new trial
 6 date. Once Defendants indicated that they would not move forward with the
 7 stipulation, Plaintiff immediately met and conferred with Defendants regarding the
 8 subject ex parte. Defendants indicated that they opposed Plaintiffs' Motion.

9 This ex parte motion is based on this notice, the attached memorandum of
 10 points and authorities, the Declaration of Lena P. Andrews (hereinafter "Andrews
 11 Decl.") all pleadings, papers and records in this action, and any additional exhibits
 12 or oral argument as may be permitted by this Court.

13
 14 Dated: May 6, 2024 **BURRIS, NISENBAUM, CURRY & LACY LLP**

15
 16 By: /s/ Lena Andrews

17 DeWITT M. LACY
 18 JOHN L. BURRIS
 19 JULIA N. QUESADA
 20 LENA P. ANDREWS
 21 Attorneys for Plaintiff,
 22 Antonio Lopez, Johanna Lopez, &
 23 S.L. by and through his guardian ad
 24 litem Rocio Flores
 25
 26
 27

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Johanna Lopez, Antonio Lopez, and S.L. hereby move and respectfully request this Court grant Plaintiffs' request to modify the scheduling order in this matter as described *infra*.

II. STATEMENT OF FACTS

Since the City of Anaheim Defendants filed their Motion to Continue, the parties have been diligently engaged in the litigation. (Andrews Decl., ¶ 2). As this Court is aware, the four Minor Plaintiffs and the City of Anaheim Defendants have agreed to settle their claims. (Dkt. 112). The parties are diligently working to finalize the settlement and make arrangements for structured settlements. (Andrews Decl., ¶ 2; see also Dkt. 114). Plaintiffs Johanna Lopez and Antonio Lopez were not parties to the settlement between the Minor Plaintiffs and the City of Anaheim Defendants. (Andrews Decl., ¶ 3; see also Dkt. 112).

On April 2, 2024, Plaintiffs Johanna Lopez and Antonio Lopez and the City of Anaheim Defendants were scheduled to attend a mediation with the Honorable Judge Joseph Biderman. (Andrews Decl., ¶ 4). Due to a conflict with her employment, Plaintiff Johanna Lopez became unavailable on April 2, 2024, necessitating the cancellation of the mediation. (Andrews Decl., ¶ 5). The intention was always to reschedule the mediation as both parties are hopeful that the remaining claims can be settled. (Andrews Decl., ¶ 6).

Thereafter attorneys for all parties, including DeWitt Lacy, Julia Quesada, Lena Andrews, Tony Sain, and Tori Bakken, began a federal trial in the courtroom of the Honorable Judge Robinson in the Southern District of California. (Andrews Decl., ¶ 7). The trial began on April 16, 2024, and concluded on April 29, 2024. (Andrews Decl., ¶ 8). Due to the trial and counsels for all parties unavailability, it

1 was not possible to reschedule the mediation between April 2, 2024, and April 29,
2 2024. (Andrews Decl., ¶ 9).

3 On April 18, 2024, counsel for Plaintiffs reached out to counsel for the City
4 of Anaheim Defendants via email and requested the parties meet and confer
5 regarding a stipulation to modify the scheduling order due to the impending
6 discovery cut off, the necessity to re-schedule the mediation prior to the fact
7 discovery cut off and expert disclosure deadline, and Plaintiffs' counsel's conflict
8 with the currently scheduled trial date in this matter. (Exhibit A to Andrews Decl.)
9 Plaintiffs did not receive a response. *Id.*

10 On April 22, 2024, Plaintiffs' counsel again reached out via email regarding
11 the proposed stipulation. *Id.* On April 23, 2024, at the request of defense counsel,
12 Plaintiffs' counsel circulated a draft stipulation to assist the Defendants in
13 determining their availability for trial. *Id.*

14 On April 26, 2024, after receiving no response, Plaintiffs' counsel again
15 followed up via email. *Id.* That day, Mr. Sain responded that counsel was still trying
16 to coordinate their schedule and would provide a suggested trial date soon. *Id.* Mr.
17 Sain also stated that they could not agree to a continuance unless the mediation had
18 been "rescheduled." *Id.* Later that day, Ms. Bakken indicated that defense counsel's
19 first availability for trial would be June of 2025. *Id.* Plaintiffs agreed to this date. *Id.*

20 The parties thereafter worked to find a date to reschedule the mediation and
21 May 14, 2024. (Andrews Decl., ¶ 10). Suddenly, on May 2, 2024, after two weeks
22 of discussions during which the parties had agree on a time frame for trial and had
23 confirmed the date for the mediation, counsel for Defendants changed their position
24 and stated that they would not agree to continue any dates and deadlines until the
25 mediation had *occurred*. (Exhibit B to Andrews Decl.) The previous agreement, per
26 Mr. Sain, that Plaintiffs relied upon was that the stipulation would be signed one the
27 mediation had been *rescheduled*. (Exhibit A to Andrews Decl.)

1 Plaintiffs thereafter informed Defendants that they would be moving ex parte
2 to modify the scheduling order in accordance with the previous agreement as
3 Plaintiffs had relied on the representations of defense counsel regarding the
4 stipulation. (Exhibit A to Andrews Decl.) Defendants indicated that they would
5 oppose this Motion but would be amenable to reconsidering the stipulation after the
6 mediation scheduled for May 14, 2024, if the case does not resolve. *Id.*

7 There is still additional discovery that Plaintiffs need to complete, including
8 the depositions of the named Defendant officers. (Andrews Decl., ¶ 11). Due to the
9 previously scheduled mediation on April 2nd, the trial which lasted from April 16th
10 to April 29th, and both parties desire to mediate the case prior to incurring additional
11 costs, the depositions of the Defendant Officers have not yet occurred. (Andrews
12 Decl., ¶ 12). In addition, the depositions of the Defendant Officers had not occurred
13 previously as the discovery as to the Defendant Officers was stayed until late
14 November of 2023. [Dkt. 103]. Thereafter, the parties were diligently engaged in
15 settlement negotiations. (Andrews Decl., ¶ 13). Accordingly, the depositions of the
16 Defendant Officers have not yet been taken. (Andrews Decl., ¶ 14). Additional time
17 is thus necessary to permit the mediation to go forward on May 14, 2024, and, if the
18 case is not resolved on that date, to allow time to finish fact discovery prior to
19 incurring the expense of retaining experts. (Andrews Decl., ¶ 15).

20 Finally, Plaintiffs' counsel is not available on the date currently set for trial.
21 (Andrews Decl., ¶ 16). The Court previously set a trial date of September 17, 2024,
22 in response to Defendants' Motion to Continue Case Management Deadlines,
23 Including Trial Date. [Dkts. 104, 110]. Plaintiffs Counsel is scheduled to begin
24 another trial on September 9, 2024, in the courtroom of the Honorable Magistrate
25 Judge Christopher D. Baker, Eastern District of California, in the matter of *Dibbern*
26 *v City of Bakersfield et al*, case no. 1:22-cv-00723-CDB. *Id.* The trial is expected to
27

1 last at least two weeks. *Id.* The *Dibbern* trial was scheduled prior to the trial in this
2 matter. (Andrews Decl., ¶ 17).

3 **III. ARGUMENT**

4 **A. Procedural Standards for Ex Parte Motions**

5 Local Rule 7-19 et seq. require movant to make a good faith effort to advise
6 opposing counsel of the date and substance of the ex parte motion. In addition, it
7 requires the memorandum of points and authorities to contain the name and contact
8 information for the opposing party.

9 Here, the parties met and conferred regarding the anticipated stipulation to
10 continue for almost two weeks. Plaintiffs counsel circulated a draft stipulation that
11 outlined Plaintiffs' contentions regarding good cause and included proposed dates
12 based on both counsels availability. The same good cause underscore this Motion.
13 In addition, Plaintiffs counsel informed opposing counsel that they would be filing
14 an ex parte without delay. Defendants indicated that they opposed the motion.

15 Contact information for counsel for the opposing party is as follows:

16 Tony Sain & Tori Bakken, Manning & Kass Ellrod Trester Ramirez, 801 S
17 Figueroa St 15th Floor, Los Angeles, CA 90017; (213) 624-6900.

18 Thus, Plaintiff has complied with Local Rule 7-19.

19 **B. Standard for Ex Parte Motions**

20 As stated in this Court's Initial Order, *Ex parte* applications are solely for
21 extraordinary relief and should be used with discretion. *See Mission Power*
22 *Engineering Company v. Continental Casualty Co.*, 883 F. Supp. 488 (C. D. Cal.
23 1995).

24 In this matter, an *ex parte* application is appropriate due to the impending
25 deadlines and Plaintiffs' counsel's reasonable reliance on the representations of
26 counsel pertaining to the stipulation. Plaintiffs counsel began meeting and conferring
27 with defense counsel on April 18, 2024. At no point between April 18 and May 2,

1 2024, did defense counsel indicate that it would not be willing to agree to the
 2 stipulation until after the mediation had *occurred*. The only conditions suggested by
 3 Defendants were their requested trial date in June of 2025 and that the mediation be
 4 *rescheduled* prior to signing the stipulation. Plaintiff met both conditions. After
 5 working diligently to confirm the mediation so the stipulation could be timely filed
 6 prior to the discovery cut off, defense counsel abruptly changed their position and
 7 refused to agree to the stipulation until *after* the mediation took place. This would
 8 leave Plaintiff in a very uncertain position should the case not settle as fact discovery
 9 will have closed and expert disclosures would be due in a matter of days. This would
 10 necessitate late motion work to re-open discovery and extend the expert deadlines,
 11 which would unnecessarily burden the Court. Instead, Plaintiff is diligently seeking
 12 a modification of the scheduling now to ensure that all request are timely made.

13 Plaintiffs will suffer irreparable harm if the scheduling order is not modified.
 14 If the case does not settle on May 14, 2024, then Plaintiffs will be left without
 15 necessary depositions and will have to expend additional funds to obtain rush reports
 16 from their experts. In addition, not modifying the scheduling order is likely to hinder
 17 full and meaningful settlement discussions.

18 This harm and prejudice can be avoided by modifying the scheduling order to
 19 allow the fact discovery deadline to fall after May 14, 2024, to allow the parties to
 20 complete discovery prior to disclosing experts and expending unnecessary funds and
 21 judicial resources should the case not settle.

22 C. Requested Modification

23 Counsel for Defendants has indicated that they cannot be available for trial
 24 until June of 2025 at the earliest¹. In a showing of good faith to Defendants, Plaintiffs
 25 respectfully request this Court modify the scheduling order as follows:

26 _____
 27 ¹ June of 2025 is Defendants earliest availability to reschedule. Plaintiffs have additional availability for trial prior to June of 2025.

Case Event	Current Deadline [Dkt 110]	Proposed Deadline
Jury Trial	September 17, 2024, at 8:30 am	June 24, 2025, at 8:30 am
File Findings of Fact and Conclusions of Law	September 10, 2024	June 17, 2025
Final Pre-Trial Conference	September 9, 2024, at 11:00 am	June 16, 2025, at 11:00 am
File Pre-Trial Documents	August 26, 2024	June 2, 2025
File Motions in Limine	August 5, 2024	May 12, 2025
Fact Discovery Cut-off	May 10, 2024	February 14, 2025
Expert Discovery Cut-off	June 14, 2024	January 10, 2025
Initial Disclosure of Experts	May 17, 2024	December 13, 2024
Rebuttal Disclosure of Experts	May 31, 2024	December 27, 2024
Law and Motion Cut-off	July 15, 2024, at 1:30 pm	February 10, 2025, at 1:30 pm
Motions to be filed and served	June 17, 2024	January 13, 2025

D. Good Cause Exists for This Court to Modify the Scheduling Order

Pursuant to FRCP 16(b)(4), “[a] schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. Proc. 16(b)(4). The Court’s Chambers’ Rules further provide that, “[t]he dates and times set in the Scheduling Order will not be modified except for good cause shown.” The “good cause” standard under FRCP 16 focused on the “reasonable diligence” of the moving party. *Noyes v. Kelly Services*, 488 F.3d 1163, 1174 n.6 (9th Cir. 2007). A party demonstrates good cause by showing that, even with the existence of due diligence, he or she was unable to meet the timetable set forth in the order. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

a. Plaintiffs Have Demonstrated Reasonable Diligence

As the facts above demonstrate, Plaintiffs have been diligently pursuing discovery in this case. Plaintiffs have propounded significant written discovery in

1 this matter, despite the extended stay of discovery as to the Defendant Officers. The
2 stay was only lifted as of November 21, 2023.

3 Since the stay, Plaintiffs have been diligently engaged in negotiating
4 resolution of the case. The claims of all the Minor Plaintiffs have been settled and
5 the parties are working towards finalizing the settlement and distribution of funds.
6 Plaintiffs Johanna Lopez and Antonio Lopez have also been working towards
7 resolution of their claims and the parties now have now confirmed that the mediation
8 will go forward on May 14, 2024. The parties were previously set to go to mediation
9 on April 2, 2024, however Plaintiffs were forced to cancel to an employment related
10 scheduling conflict. Counsel for both Plaintiffs Johanna Lopez and Antonio Lopez
11 and the City of Anaheim Defendants thereafter began a trial together that lasted from
12 April 16, 2024, to April 29, 2024. This trial created an immovable scheduling
13 conflict thus no depositions nor mediations could take place during this time.

14 Realizing the parties were running out of time to participate in a mediation
15 prior to incurring additional costs of depositions and retaining experts, Plaintiffs'
16 counsel reached out and attempted to negotiate a stipulation that would allow the
17 case to go to mediation prior to incurring these expenses and wasting the Court's
18 time with unnecessary motion work. Defense counsel then strung Plaintiffs' counsel
19 along for two weeks while Plaintiffs' counsel worked in good faith towards a
20 stipulation. Thereafter, on May 2, 2024, defense counsel changed its position
21 without warning and stated that it would not agree to a stipulation until after the
22 mediation had occurred, rather than after it was rescheduled and confirmed.

23 Plaintiffs remain optimistic that the case could resolve on May 14, 2024.
24 However, Plaintiffs cannot wait to see how the mediation turns out prior to seeking
25 relief given the impending fact discovery and expert disclosure deadlines. A
26 modification of the scheduling order will benefit both sides as all parties will be able
27 to avoid unnecessary costs pertaining to depositions, rushed transcript orders, and

expert fees while promoting meaningful negotiations between the parties. The modification of the scheduling order will also conserve judicial resources and alleviating additional motion work should the case not settle on May 14, 2024.

b. No Undue Prejudice to Defendants Will Occur if the Court Grants Plaintiffs' Motion

As evidenced by Defendants initial agreement to stipulate to modify the scheduling order, Defendants will not incur any prejudice if the Court grants Plaintiffs Motion. The requested schedule takes into account defense counsel's schedule and professed unavailability until June of 2025. Moreover, the modification will also save Defendants from expending unnecessary costs and attorneys' fees in taking additional depositions and hiring experts before the parties have had a chance to meaningfully negotiate.

Thus, extending the discovery deadlines will benefit Defendants as well.

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully requests that the Court grant this Motion to Modify the Court's Scheduling Order.

Dated: May 7, 2024

BURRIS, NISENBAUM, CURRY & LACY LLP

By: /s/ Lena Andrews

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